C.S.100

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(1)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) NO. 65 OF 2006 7

PETITIONER : R.L.Koshale S/o. Shri Mangu Ram Koshale aged about 41 years, Occupation – Service, Posted as Upper Division teacher R/o. Govt. Boys H.S.School Jashpur Nagar Distt.- Jashpur (C.G.)

P.R. No. 7818/06
Presented by Shri Sanjay Agrawal
dated 26/12/06

VERSUS

RESPONDENTS 1. The State of Chhattisgarh, Through the Secretary Department of School Education, D.K.S. Building, Raipur (C.G.)

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2. The Assistant Commissioner, Tribal Development Jashpur Distt.- Jshpur (C.G.)

3. District Education officer, Jashpur Distt.- Jashpur (C.G.)

22/12/06

4. The Director of public Instruction pension Bada Raipur, Distt.- Raipur

WRIT PETITION UNDER ARTICLE 226 OF CONSTITUTION OF INDIA

(22)

HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. (S) No. 65 of 2007

Petitioner : R. L. Koshale

Versus

Respondents : The State of Chhattisgarh & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Parag Kotecha, Advocate for the Petitioner.

Shri Arvind Dubey, Panel lawyer for the State/respondents.

ORDER

(Passed on this 15th day of January, 2007)

1. The petitioner is working as Upper Division Teacher in the Government Boys Higher Secondary School, Jashpur Nagar. During the course of employment the petitioner obtained permission to appear in B. Ed. Examination and he obtained the certificate in the year 1995, which he has acquired on his own expenses.

2. According to learned counsel for the petitioner, the petitioner is entitled to two advance increments in view of the decision of this Court in the case of **Yashwant Kumar Bharadwaj Vs. Municipal Corporation, Durg and another** {2006 (II) MPJR-CG 96}. This Court in the case of Yashwant Kumar Bharadwaj Vs. Municipal Corporation, Durg and another (Supra), came to the conclusion that the teachers, who had obtained B. Ed. /B.T.I. Examination Certificate on their own expenses, are covered by the circular dated 24.12.98 (Annexure P/7) issued by the State Government of Madhya Pradesh.

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3. Further in the matter of **Smt. Manorama Shrivastava Vs. State of M.P. and others** { 2000 (1) M.P.L.S.R. 136 } the Madhya Pradesh State Administrative Tribunal, Gwalior Bench, while considering the circular dated 1.3.1999 wherein, it is provided that the Assistant Teachers, who have acquired B.Ed. degree at their own cost between 23.10.1964 and 7.5.1973 shall be entitled to two advance increments, relied on decision in the case of **Rakesh Kumar Shrivastava Vs. State of M.P. & others** passed in O.A.No. 1632/99, decided on 12.10.1999 wherein it is observed that the circular dated 1.3.1999 cannot be made applicable retrospectively. Thus, a teacher, may be Assistant Teacher, who has obtained B.Ed. degree before 1.3.1999 is entitled to two advance increments.

4. It is pointed out by learned counsel appearing for the petitioner that the then State of Madhya Pradesh had filed a Special Leave Petition against the orders passed by the Tribunal and the Hon'ble Supreme Court dismissed **Special Leave Petition No. 1999/2000** filed against the order of the Tribunal. Therefore, the direction to the effect that the circular dated 1.3.1999 cannot be made applicable retrospectively, passed by the Tribunal, becomes final and the same shall be applicable to all the Assistant Teachers who have obtained B.Ed./B.T.I. examination certificate before 1.3.1999. It is further substantiated by a circular dated 17.10.2003 issued by the present State of Madhya Pradesh wherein the circular clearly states about the decision of the Supreme Court.

5. Learned counsel for the petitioner further submits that the facts and question of law involved in the present case are squarely

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covered by decision of this Court in the case of **Yashwant Kumar Bharadwaj Vs. Municipal Corporation, Durg and another** (Supra), to which learned counsel appearing for the respondents fairly concedes and agrees with the averment made by learned counsel appearing for the petitioner.

6. Accordingly, the writ petition is allowed in terms of the order passed in the case of **Yashwant Kumar Bharadwaj Vs. Municipal Corporation, Durg and another** (Supra), subject to verification of the fact as to whether the petitioner has acquired B. Ed. Examination Certificate on his own expenses as per the circulars dated 24.12.1998 & 1.3.1999 and further whether he has been paid two advance increments or not. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge